



Battle Creek Zoning Board of Appeals

Staff Report

Meeting: June 14, 2011
Appeal #Z-05-11

To: Zoning Board of Appeals
From: Glenn Perian, Senior Planner
Subject: Petition for a dimensional variance (Z-05-11) to permit the construction of a detached accessory building in a side yard and encroaching on the front yard setback at 123 N. Moorland Drive.

Summary

This report addresses a petition from David P. and Mary Shear, seeking approval of a Dimensional Variance (Z-05-11), to construct a detached accessory building 17' from the front property line and in the side yard at 123 N. Moorland Dr.

Background/Project Information

The subject site is located at 123 N. Moorland Dr. The subject lot is an interior lot and is located in the R-1B "Single Family Residential" District. The minimum lot standards for the R-1B zone include a minimum lot width of 60 feet and a minimum lot area of 7,500 square feet. The subject lot is approximately 204' wide x 75' and meets the minimum width and lot area standard for the R-1B zone, however, this particular lot is much wider than what it is deep. The residential building was originally constructed in 1955 and is located in the northern portion of the lot. The request is to construct a detached accessory building in the side yard, 17' from the front property line to provide additional storage for personal items of the owners. Chapter 1286 of the Zoning Ordinance states that residential accessory structures must be located in the rear yard when the main residential building contains an attached area for the storage of vehicles, personal property, or other accessory uses.

Legal Description

COUNTRY CLUB MEADOWS 2 LOT 302, THAT PART OF LOT 285 LYING ELY OF SLY EXT OF W LI OF LOT 302 (ELY PORTION OF LOT 285 ASSESSED WITH 2333-04-585-0 IN 1998)

Public Hearing and Notice Requirements

An advertisement of this public hearing was published in the Battle Creek SHOPPER NEWS on Thursday, May 26, 2011, not less than the 15 days before the hearing as required by State Law and ordinance.

Notices of the public hearing were also sent by regular mail on May 23, 2011, to 47 property owners and occupants located within 300 feet of the subject parcel. Planning staff has received no comments relative to this request.



Aerial Photograph of the Subject Site

Surrounding Land Uses

The subject property is located in a residential neighborhood between Riverside and Capital Ave SW, just north of Country Club Blvd.

Applicable Zoning Ordinance Provisions

Chapter 1234.04 (b) (1) authorizes the Zoning Board of Appeals to grant variations in the yard requirement of any district where there are unusual and practical difficulties in the carrying out of the requirements of the Zoning Code due to the irregular shape of the lot or topographical conditions, provided that such a variation will not seriously affect any adjoining property or the general welfare of the public; and

Chapter 1234.04 (b) (2) authorizes the Zoning Board of Appeals to grant variations, upon appeal, whenever a property owner can show that strict application of the provisions of the Zoning Code relating to the use of buildings or structures or to the use of land will impose upon them unusual and practical difficulties or hardship. This section requires that such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by the Zoning Code, and that the surrounding property will, at the same time, be properly protected.

Analysis

The Appellant is requesting a front and side yard setback variance at 123 N. Moorland Dr. that would authorize the construction of a detached accessory building 17' from the front property line and in a side yard, contrary to limitations outlined in chapter 1286 of the Planning and Zoning Code. The Appellant has stated in the supporting material that the lot is too narrow to place the building behind the house in the rear yard. They have also stated an old dry-well and septic system is located north of the existing residential structure. The Appellant has supplied additional reasons supporting the request for appeal and they are

included with the application and part of this report. An aerial photo showing the shape of the lot and existing structures located on the lot along with a sketch of the proposed location of the detached accessory building has also been provided. The Appellant would like to center the building between the front and rear property line, south of the residence.

Is there something unique about this lot or property that makes relief necessary? We would agree that by definition the lot meets the minimum standards for the R-1B zoning district. We would also agree that the lot is unusually wide compared to the depth of the lot and the Appellant has very limited options other than what is proposed for a location for the accessory building.



Findings and Recommendation

The Zoning Board of Appeals can approve, approve with conditions, or deny this request. The Zoning Board of Appeals can also table or postpone the request pending additional information. In consideration of all variations from the Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the conditions listed below are satisfied. Planning staff has reviewed these conditions and we believe that each condition can be justified in an affirmative manner. We have provided a rationale for each condition set forth below for Dimensional Variances. Therefore, the Planning staff recommends that the Zoning Board of Appeals approve the Dimensional Variance (Z-05-11) based on the following findings contained in this staff report.

- 1) Staff finds that there is unusual and practical difficulty specific to the property in question. We understand that the lot meets the width and area standards for the R-1B district; however, the lot is unusually wide with very little depth leaving the Appellant very limited options for placement of a detached accessory building.
- 2) Granting the variance and thereby permitting the applicant to move forward with the project in spite of the fact it is not in compliance with the zoning ordinance will not seriously affect any adjoining property or the general welfare of the public. Furthermore, we have not heard from any neighbors objecting to the project.
- 3) Staff believes that if the variance in question is granted the property will still be in harmony with the general purpose and intent of the R-1B zoning district in that other properties in the neighborhood have detached accessory buildings.

- 4) Staff believes that if the Zoning Board grants the variance, the setback waiver will not serve merely as a convenience to the applicant and will alleviate some demonstrable practical difficulty so great as to warrant a variation to the Master Plan.

If the Zoning Board finds that all of the above conditions have been satisfied, then all of the following standards must be met, as well.

- 1) Staff believes that the Appellant has clearly demonstrated that practical difficulty will in fact exist if the variance is not granted. As seen from the aerial on page 2 of this report, the lot is unusually wide with very little depth, leaving the Appellant very limited options for placement of a detached accessory building other than that what is proposed.
- 2) Staff does not believe the appellant has created the practical difficulty associated with this request.
- 3) Staff believes that the practical difficulties are exceptional and peculiar to the property of the person requesting the variance for the reasons stated in item #1 above.
- 4) Staff believes that the alleged practical difficulties result from conditions which do not generally exist throughout the City in that most lots in the general neighborhood (see aerial on page 2) are narrower and deeper allowing accessory building to be located in the rear yard.
- 5) The Appellant has furnished documentation to indicate that practical difficulties do in fact exist. Staff believes that the furnished documentation relative to unique property conditions meet the standards outlined in the Zoning Code authorizing the Board to grant the variance.
- 6) Staff does not believe the term "practical difficulty" is deemed financial hardship in this case.
- 7) Staff believes the alleged practical difficulty which will result in a failure to grant the variance is substantially more than a mere inconvenience in this case.
- 8) Staff believes that by allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by the Zoning Code, the individual practical difficulties that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.
- 9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.
- 10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.

Attachments

The following information is attached and made part of this Staff Report.

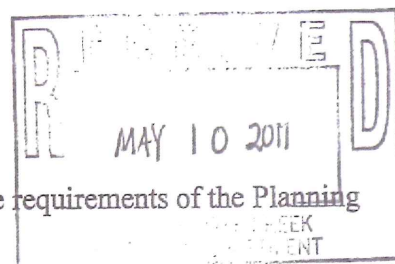
1. ZBA Petition Form (Petition #Z-05-11)
2. Aerial photo of the property showing the proposed location of the accessory building
3. A signed document from the property owners allowing Rick Lang of American Interiors to represent them at the ZBA hearing

Date: MAY 9, 2011

Appeal No. 2-05-11

APPLICATION FOR A VARIANCE
ZONING BOARD OF APPEALS

City of Battle Creek Michigan



An Appeal to the Zoning Board of Appeals to authorize a variance from the requirements of the Planning and Zoning Code (Part Twelve) of the City of Battle Creek.

Name of Appellant: DAVID P AND MARY SHEAR

Address: 123 N. MOORLAND DR, BATTLE CREEK, MI Phone: 269-963-4752

Name of Owner (if different from Appellant): _____

Address: _____ Phone: _____

TO THE ZONING BOARD OF APPEALS: Request is hereby made for permission to:

(Choose One) Extend Erect Waive Use Convert Enclose

ERECT A STORAGE BUILDING IN A side-yard

ENCROACHING ON FRONT-YARD SET BACK; TO ALLOW (768sq. ft.)
IT TO BE BUILT 17 ft. FROM FRONT-YARD setback. (Zoned R-1B)
ACCESSORY BLDG

contrary to the requirements of Section(s) 1286.05 (a) of the Planning and Zoning Code, upon the premises known as 123 N MOORLAND DR Battle Creek, MI, in accordance with the plans and/or plat record attached.

The proposed building or use requires Board action in the following area(s):

THE BACK YARD IS TOO NARROW TO PUT UP ANY SUCH
BUILDING

Property/Tax I.D.# No. 2333 - 04 - 602 - 0

(LOT IS WEDGE SHAPED)

Size of the Lot: Width 204.84 Depth 102.05 AT DEEPEST pt. NARROWS TO 66.95 AT NARROWEST

Size of Proposed Building: Width 24 Depth 32 Height 9

The following reasons are presented in support of this appeal (complete each section):

- a) This property cannot be used in conformance with the ordinance without the requested variance because:

THE BACK YARD IS TOO NARROW TO BUILD ON

- b) This problem is due to a unique situation not shared in common with nearby property owners because:

THE BACK YARD IS TOO NARROW TO BUILD ON. PROPERTY IS
WIDE AND NARROW

- c) Granting the variance would not alter the essential character of the area because:

THE EXTERIOR OF THIS STORAGE BUILDING WILL MATCH
THE EXTERIOR OF OUR HOUSE WITH THE SAME SIDING, ROOFING,
WINDOWS AND DOORS TO MAKE IT BLEND IN. (AND NOT BE AN EYESORE
TO THE AREA)

- d) The problem is not self-created because:

THE SHAPE OF THE LOT DOES NOT ALLOW BUILDING
BEHIND THE HOUSE

- e) **USE VARIANCES ONLY** It is not possible to use this particular property for any other use currently allowed in the zoning district because:

I hereby affirm that, to the best of my knowledge, all the above and accompanying statements and drawings are correct and true. In addition, I give permission to the City of Battle Creek's Planning Department staff to access my property, if necessary, to take photographs of the subject of this appeal.

DAVID P AND MARY SHEAR
(Print Appellant Name)

David P Shear Mary Shear
(Signature of Appellant)

123 N MOORLAND DR BATTLE CREEK MI 49015
(Address of Appellant)

If you require additional information or assistance in filling out this application, please contact the Planning Department at (269) 966-3320.

MAY 9, 2011

TO WHOM IT MAY CONCERN

RICK LANG OF AMERICAN INTERIORS
WHO IS OUR BUILDER, FOR THE
PROPOSED STORAGE BUILDING, HAS
OUR PERMISSION TO REPRESENT
US AT THE ZONING BOARD OF
APPEALS MEETING

David P Shear

DAVID P. SHEAR

Mary Shear

MARY SHEAR

Rick Lang
American Interiors
6828 2 1/2 MI. Rd.
East LeRoy, MI 49051
Cell: 317-0230

* Will attend ZBA mtg
in June for Petitioner
NOTE: He is their Contractor
and need to Mail Packet
for mtg to him @ address
above.

* Per Property Owner on

5/10/11 @ 2:35 pm

Mrs. Mary Shear
as They will be out of Town.

